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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ROSIE PRECIADO,) Civil No. 09cv02343 JLS(RBB)
12)
13 Plaintiff,)
14)
15 v.) **REPORT AND RECOMMENDATION**
16) **DENYING PLAINTIFF'S MOTION FOR**
17) **SUMMARY JUDGMENT [ECF NO. 20]**
18)
19 MICHAEL J. ASTRUE, Commissioner)
20 of Social Security,)
21)
22)
23 Defendant.)
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20 **I. PROCEDURAL BACKGROUND**

21 On October 21, 2009, Plaintiff Rosie Preciado filed a
22 Complaint against Michael J. Astrue, Defendant Commissioner of
23 Social Security, challenging the denial of Preciado's claim for
24 supplemental security income benefits [ECF No. 1]. Defendant filed
25 an Answer [ECF No. 15] and the Administrative Record [ECF No. 16]
26 on January 3, 2011.

27 On March 3, 2011, Preciado's Motion for Summary Judgment,
28 along with an attached Memorandum of Points and Authorities, was

1 filed [ECF No. 20]. Defendant's Notice and Cross-Motion for
2 Summary Judgment were filed on April 25, 2011 [ECF Nos. 25-26].
3 The Cross-Motion is essentially the same document as the
4 Defendant's Opposition to Plaintiff's Motion for Summary Judgment,
5 which was filed on April 26, 2011 [ECF No. 27]. Preciado's
6 Opposition to Defendant's Cross-Motion for Summary Judgment was
7 filed along with a Memorandum of Points and Authorities on May 3,
8 2011 [ECF No. 28]. The Defendant filed an Opposition to Plaintiff
9 Rosie Preciado's Opposition to Defendant's Cross-Motion for Summary
10 Judgment with an exhibit on May 9, 2011 [ECF No. 30].¹

11 The Court finds that Plaintiff's Motion for Summary Judgment
12 is suitable for resolution on the papers, pursuant to Civil Local
13 Rule 7.1(d)(1) [ECF No. 29]. This Court has reviewed Preciado's
14 Motion for Summary Judgment and attachment, Defendant's Cross-
15 Motion for Summary Judgment and Opposition to Plaintiff's Motion,
16 and Preciado's Opposition to Defendant's Cross-Motion. For the
17 reasons set forth below, the Court recommends **DENYING** Plaintiff's
18 Motion for Summary Judgment. The Court will issue a separate
19 report and recommendation as to Defendant's Cross-Motion for
20 Summary Judgment.

21 II. DISCUSSION

22 In her Motion for Summary Judgment, Preciado argues that the
23 ALJ erred in determining that she had past relevant work experience
24 to find that she was not disabled. (Pl.'s Mot. Summ. J. Attach. #1
25 Mem. P. & A. 3-7, ECF No. 20.) The Plaintiff contends that her
26 prior earnings do not rise to the level of substantial gainful
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¹ The Court construes this filing as Defendant's Reply.

1 activity ("SGA"), and she therefore has no past relevant work
2 experience. (Id. at 4-5, 7.)

3 In opposition, Defendant reproduces Plaintiff's income and
4 earnings for the past fifteen years to demonstrate that she indeed
5 does have past relevant work experience meeting or exceeding SGA
6 levels. (Def.'s Opp'n Pl.'s Mot. Summ. J. 5, ECF No. 27.) The
7 Commissioner notes that Preciado mistakenly relies on only her
8 earnings from 2004 through 2007. (Id.) Yet, the relevant period
9 for determining whether Plaintiff has past relevant work experience
10 is the fifteen years preceding the May 2009 administrative hearing.
11 (Id. at 4-5.)

12 In her Opposition to Defendant's Cross-Motion for Summary
13 Judgment, Preciado concedes that her Motion is based on a
14 "fundamental mis-reading of the record that the Commissioner has
15 now highlighted." (Pl.'s Opp'n Def.'s Mot. Summ. J. Attach. #1
16 Mem. P. & A. 1, ECF No. 28.) The Plaintiff acknowledges that the
17 Court should deny her Motion for Summary Judgment. (Id.) Even so,
18 she argues that the Court should also deny Defendant's Cross-Motion
19 for Summary Judgment, and remand the matter for further
20 proceedings. (Id.)

21 In light of Preciado's concession, as well as the evidence in
22 the record demonstrating that the Plaintiff engaged in past
23 relevant work at SGA levels, the district court should **DENY**
24 Preciado's Motion for Summary Judgment.

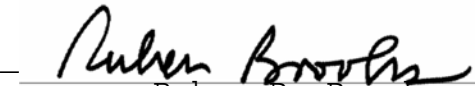
25 **III. CONCLUSION AND RECOMMENDATION**

26 For the reasons stated above, the Court recommends **DENYING**
27 Plaintiff's Motion for Summary Judgment [ECF No. 20].

28 This Report and Recommendation will be submitted to the United
States District Court Judge assigned to this case, pursuant to the

1 provisions of 28 U.S.C. § 636(b)(1). Any party may file written
2 objections with the Court and serve a copy on all parties on or
3 before December 6, 2011. The document should be captioned
4 "Objections to Report and Recommendation." Any reply to the
5 objections shall be served and filed on or before December 13,
6 2011. The parties are advised that failure to file objections
7 within the specified time may waive the right to appeal the
8 district court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.
9 1991).

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11 Dated: November 22, 2011

12 
13 Ruben B. Brooks
14 United States Magistrate Judge

15 cc: Judge Sammartino
16 All Parties of Record
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